

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated February 19, 2020, which held that the appellant was not eligible for funding for the following power wheelchair components: power recline, seat elevation, power articulating swing away leg rests, and attendant controls.

The ministry found that the information provided established that the power leg rests and attendant controls were medically essential but that as the appellant has resources available to obtain the medical equipment requested, the appellant was not eligible under the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) Schedule C, section 3(1)(b)(ii).

The ministry found that the power recline and seat elevation components were not required to achieve or maintain basic mobility as required by EAPWDR Schedule C, section 3.2, nor were they the least expensive appropriate medical equipment, as required by section 3(1)(b)(iii).

**PART D – RELEVANT LEGISLATION**

EAPWDR, section 62 and Schedule C, section 3(1) and 3.2

## **PART E – SUMMARY OF FACTS**

The information before the ministry at the time of reconsideration included the following:

- Medical Equipment Request and Justification form dated May 16, 2019 (the “Form”) indicating that the appellant needs a power wheelchair 18” x 18” with tilt, power elevating leg rests (2), head array, and monitor of operation system. The Form indicates that the appellant’s medical condition is multiple sclerosis (MS).
- Email from a community medical society dated May 16, 2019 indicating that the community society can fund each of their clients up to \$3,500 per year.
- Assessment from an occupational therapist (the “OT Assessment”) undated indicating that the appellant applied for a power wheelchair through a community medical program but was advised that funding was only available to a maximum of \$3,500. The OT indicates that the appellant’s wheelchair is 14 years old and has multiple problems with electrical connections.
- OT update of May 21, 2019 indicating that the appellant’s wheelchair was no longer working, and the appellant was forced to sit in a temporary manual tilt wheelchair. The OT indicates that the appellant has no other funding sources to acquire a power wheelchair and that the wheelchair is absolutely necessary and indispensable as the appellant depends on the power wheelchair for all everyday activities from getting up to getting back to bed. The OT Assessment indicates that the tilt feature, power elevating leg rests, and head array are medically necessary. The OT also recommended power recline to offload longstanding skin breakdown issues and seat elevation to give eye contact with other people.
- Sales Quote from a medical equipment provider dated May 21, 2019 for a power wheelchair and various components in the amount of \$40,161.37.
- Sales Quotation from a medical equipment provider dated August 15, 2019 for a power wheelchair and components in the amount of \$28,600.03.
- Sales Quotation form a medical equipment provider dated September 23, 2019 for a power wheelchair and components in the amount of \$24,686.27.
- Letter from the ministry to the appellant dated December 2, 2019 advising that the request for the Quickie QM710 power wheelchair with power tilt was approved but the request for power seat elevation and power recline was denied as it did not meet the legislative criteria of EAPWDR Schedule C, section 3.2(2).
- Purchase Authorization from the ministry to the medical equipment provider dated December 2, 2019 indicating that the ministry approved the cost of the power wheelchair and wheelchair seating for a total amount of \$22,902.56.
- Request for Reconsideration dated January 2, 2020 (RFR) indicating that the appellant needed an extension of time to get further information from the OT.
- Report from an occupational therapist dated February 16, 2020 (the “OT Report”) providing justification for the power recline, attendant control, and power articulating swing away leg rest wheelchair components.

### **Additional information provided**

The Notice of Appeal (“NOA”) dated March 5, 2020, states that the ministry’s statement that the appellant has secured alternative funding for the wheelchair components requested is not true. The NOA indicates that the appellant is still significantly short of the funding required and that the medical equipment provider agreed to order the wheelchair even though it was only partially funded, based on the appellant’s commitment to raise the necessary funds.

The appellant provided a submission dated March 24, 2020, two pages, prepared by an advocate (the “Submission”). The Submission indicates that the reconsideration decision is not accurate as the appellant does not have alternate funding secured to obtain the power leg rests and attendant control and that the appellant does not have resources available to obtain the requested medical equipment. The Submission indicates that the appellant and advocates have been fundraising for several months to try and raise the necessary funds for the wheelchair components but have exhausted all reasonable fundraising opportunities.

With the Submission, the appellant provided a letter from a medical equipment provider undated (the “Letter”) indicating that it had received authorization from the ministry in the amount of \$22,902.56 for the purchase of a power wheelchair and seating. The Letter indicates that the authorized amount does not cover the full cost of the wheelchair and necessary components, and that the medical equipment provider never confirmed to the ministry that full funding was secured. The medical equipment provider indicates that the wheelchair was ordered even though only partial funding was raised because the appellant and advocates had committed to raising the additional funding. The medical equipment provider has agreed to allow the balance of the cost of the wheelchair to be paid as the funds are raised. The medical equipment provider indicates that the decision to order the wheelchair before all of the necessary funding was secured was done largely out of compassion for the appellant.

The medical equipment provider also provided a sales quotation dated March 24, 2020 (the “Quote”) indicating the total cost for the wheelchair and the components to be \$28,427.39.

The ministry provided a letter dated April 3, 2020 indicating that the ministry’s submission would be the reconsideration decision provided in the Record of the Ministry Decision.

### **Admissibility of New Information**

The panel has admitted the information in the NOA, the Submission, the Letter, and the Quote as it is information that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal, in accordance with section 22(4) of the *Employment and Assistance Act*. In particular, the new information responds to the ministry’s position that the appellant has alternate resources available to secure the requested medical equipment.

With the consent of both parties, the hearing was conducted as a written hearing pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

**PART F – REASONS FOR PANEL DECISION**

**Issue on Appeal**

The issue on appeal is whether the ministry's decision to deny the appellant's request for funding for the power wheelchair components of a power recline, seat elevation, power articulating swing away leg rests, and attendant controls was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

In particular, was the ministry reasonable in determining that the appellant had resources available to obtain the power leg rests and attendant controls thereby rendering the appellant ineligible for funding as per the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) Schedule C, section 3(1)(b)(ii)?

Was the ministry reasonable in determining that the power recline and seat elevation components are not required to achieve or maintain basic mobility as required by EAPWDR Schedule C, section 3.2, and that they are not the least expensive appropriate medical equipment, as required by section 3(1)(b)(iii)?

**Relevant Legislation**

**EAPWDR – Schedule C**

**Medical equipment and devices**

3 (1) Subject to subsections (2) to (5) of this section, the medical equipment and devices described in sections 3.1 to 3.12 of this Schedule are the health supplements that may be provided by the minister if

(a) the supplements are provided to a family unit that is eligible under section 62 [*general health supplements*] of this regulation, and

(b) all of the following requirements are met:

(i) the family unit has received the pre-authorization of the minister for the medical equipment or device requested;

(ii) there are no resources available to the family unit to pay the cost of or obtain the medical equipment or device;

(iii) the medical equipment or device is the least expensive appropriate medical equipment or device.

(2) For medical equipment or devices referred to in sections 3.1 to 3.8 or section 3.12, in addition to the requirements in those sections and subsection (1) of this section, the family unit must provide to the minister one or both of the following, as requested by the minister:

- (a) a prescription of a medical practitioner or nurse practitioner for the medical equipment or device;
- (b) an assessment by an occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

...

(3) Subject to subsection (6), the minister may provide as a health supplement a replacement of medical equipment or a medical device, previously provided by the minister under this section, that is damaged, worn out or not functioning if

- (a) it is more economical to replace than to repair the medical equipment or device previously provided by the minister, and
- (b) the period of time, if any, set out in sections 3.1 to 3.12 of this Schedule, as applicable, for the purposes of this paragraph, has passed.

## **Medical equipment and devices — wheelchairs**

3.2 (1) In this section, "wheelchair" does not include a stroller.

(2) Subject to subsection (4) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to achieve or maintain basic mobility:

- (a) a wheelchair;
- (b) an upgraded component of a wheelchair;
- (c) an accessory attached to a wheelchair.

(3) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an item described in subsection (2) of this section is 5 years after the minister provided the item being replaced.

(4) A high-performance wheelchair for recreational or sports use is not a health supplement for the purposes of section 3 of this Schedule.

### **Panel Decision**

#### **Power Leg Rests & Attendant Controls**

The appellant's position is that the ministry's understanding that the medical equipment provider had informed the ministry that funding for the attendant control and power leg rests had been secured is not accurate. The appellant's position is that the medical equipment provider agreed to order the power wheelchair with all the features deemed to be essential for the appellant's quality of life on the basis that the appellant and the appellant's advocates committed to raising the additional funds needed to pay for the features and equipment that were not found eligible for ministry funding.

The Submission indicates that the appellant and the advocates have been fundraising for several months through appeals to friends, local businesses, societies and services clubs as well as the community at large but that all reasonable fundraising opportunities have been exhausted. The appellant argues that while the appellant and the advocates have committed to the medical equipment provider to continue to try raising the funds for the attendant control and power leg rests, that commitment does not relieve the ministry of its mandate to provide the funding for the components for which the appellant is eligible.

The Submission indicates that the community fundraising efforts that have been undertaken (and committed to) to cover the cost of components that are not deemed medically essential by the ministry do not render the appellant ineligible for funding for components that are medically essential.

The appellant relies on the Letter from the medical equipment provider with the Quote in the amount of \$28,427.39 that includes the cost for the wheelchair and the components that the ministry has found to be medically essential. The Quote does not include the features and equipment that have been deemed by the ministry as not medically essential. The appellant's position is that the ministry should find the appellant eligible for funding for the full amount of \$28,427.39.

The ministry's position is that the power leg rests and attendant controls are medically essential and are the least expensive appropriate equipment for the appellant's needs. However, the ministry's position is that the requirements of EPAWDR Schedule C, section 3(1)(b)(ii) have not been met. The ministry's position is that the appellant has secured alternative funding for the requested components and that the power wheelchair with the requested components is now on order. The ministry is not satisfied that the appellant does not have resources available to obtain the medical equipment.

The panel notes that it was uncontested that the appellant is eligible under EPAWDR section 62 for supplements in Schedule C. The panel also notes that the ministry accepted that an OT had confirmed a medical need for power leg rests and attendant controls. The only requirement that the ministry decided was not met was EPAWDR Schedule C section 3(1)(b)(ii), which requires that there are no resources available to the appellant to pay the cost of or obtain the medical equipment or device.

The panel finds that the ministry's reconsideration decision with respect to the power leg rests and attendant controls was not reasonable. Although the appellant and the appellant's advocates have committed to the medical equipment provider to continue to make efforts to raise the funds for the additional amounts over and above the ministry purchase authorization

amount of \$22,902.56, there is no information to confirm that the appellant has other resources available to obtain the medical equipment. The appellant and the advocate confirm that fundraising efforts have been exhausted. While it is not clear how much money was raised from the fundraising efforts and other community resources that may be available, the reconsideration decision does not identify the alternate resources that would provide the necessary funding. The panel finds that the ministry's decision that the appellant has alternate resources available based on a commitment to raise funds is not reasonable.

The Letter from the medical equipment provider indicates that the wheelchair was ordered even though only partial funding has been raised. The Letter indicates that the wheelchair was ordered before all of the necessary funding was secured largely out of compassion for the appellant, and based on the commitment from the appellant and the appellant's advocates' commitment to raise the additional funding needed to cover the full cost of the wheelchair and the components. The Letter does not indicate that the appellant has the resources available to obtain the medical equipment so the panel finds that the ministry's statement that the medical equipment provider confirmed alternate resources is not accurate or reasonable.

The panel finds that the reconsideration decision was not reasonable based on the evidence and it was not a reasonable application of the legislation in the appellant's circumstances. In particular, the panel finds that the ministry's decision that the appellant did not meet the legislative criteria of EAPWDR Schedule C, section 3(1)(b)(ii) was not a reasonable application of the legislation in the appellant's circumstances as the information provided did not demonstrate that there were resources available to the appellant to pay the cost or obtain the medical equipment.

Accordingly, the panel rescinds the ministry's decision finding the appellant ineligible for funding for power leg rests and attendant controls.

### **Power recline & seat elevation**

The appellant's position is that the power recline and seat elevation wheelchair components are medically essential to achieve or maintain basic mobility as required by EAPWDR Schedule C, section 3.2(1). The appellant's position is that the requested medical equipment is the least expensive appropriate medical equipment as required by EAPWDR section 3(1)(b)(iii) and that the appellant does not have resources available to pay the cost of or obtain the medical equipment or advice as set out in EAPWDR, Schedule C, section 3(1)(b)(ii).

The appellant relies on the OT Report that states that unlike the power wheelchair tilt, which only tilts back 50 degrees, power recline fully reclines the appellant to 178 degrees, allowing increased pressure relief through both the coccyx (tailbone area) and ischial tuberosities ("sit bones"). The OT states that the appellant is elderly and suffers from a progressive debilitating disease. The OT states that the appellant's skin integrity will be more compromised as the appellant ages, putting the appellant at increased risk of developing pressure sores in these areas.

The appellant's position is that the seat elevation is required at her dentist/eye doctors, at the art gallery, at the theatre, in most restaurants, and to have eye contact with other people.

The ministry's position is that the information provided does not demonstrate that the appellant's request for power recline was medically essential for basic mobility, that it was the last expensive appropriate equipment for the appellant's needs, and the ministry was not satisfied that the appellant does not have resources available to obtain the power recline as required by EAPWDR Schedule C sections 3(1)(b)(ii), 3(1)(b)(iii), and 3.2(2).

The ministry's position is that the OT did not confirm that the medical need for seat elevation as required by EAPWDR Schedule C section 3(2)(b). The ministry also found that the information provided does not demonstrate that the appellant's request for seat elevation was medically essential for basic mobility, that it was the last expensive appropriate equipment for the appellant's needs, and the ministry was not satisfied that the appellant does not have resources available to obtain the power recline as required by EAPWDR Schedule C sections 3(1)(b)(ii), 3(1)(b)(iii), and 3.2(2).

In terms of the ministry's decision that the appellant has secured alternative funding for the requested components and that the appellant does not meet the legislative criteria of EAPWDR Schedule C, section 3(1)(b)(ii) as the ministry was not satisfied that the appellant does not have resources available to obtain the medical equipment or device, the panel finds that the ministry's decision is not reasonable. For the same reasons noted above with respect to the power leg rests and attendant controls, the ministry's position that the medical equipment provider had confirmed funding, is not accurate as evidenced by the Letter from the medical equipment provider. The ministry has not identified any other resources that the appellant has to obtain the requested medical components and a commitment to raise funds does not mean that the appellant has alternate funding available.

In terms of the power recline, the ministry's position is that information has not been provided to confirm that the appellant medically requires the ability to fully recline without the assistance of care aides. The ministry's position is also that the assessments provided by the OT confirm the medical need for power recline, but that the information provided does not demonstrate that the power recline is necessary to achieve or maintain basic mobility or complete daily living activities.

The panel finds that the ministry's reconsideration decision regarding the power recline component was not reasonable. The appellant has no voluntary motor control/movement/function below the appellant's neck so basic mobility for the appellant is extremely limited, as are any daily living activities. While the appellant's care aides provide assistance, the care aides are not available to help at all times and the information from the OT confirms that the appellant needs the ability to change positions and recline fully in order to relieve pressure through the coccyx (tailbone area) and ischial tuberosities ("sit bones"). The OT confirms that the appellant suffers from a progressive debilitating disease, that the appellant's skin integrity will be more compromised as the appellant ages, which puts the appellant at increased risk of developing pressure sores in these areas.

The panel finds that the information from the OT confirms that the appellant needs the ability to recline fully, not just to the 50 degrees provided by the power wheelchair tilt in order to achieve basic mobility and to relieve pressure on the tailbone area and sit bones. While the care aides



can provide some assistance there is no information to indicate that the care aides are able to assist as often as the appellant needs. In addition, in terms of cost, the reconsideration decision does not provide any explanation for why the power recline is not the least expensive appropriate medical equipment or device. The documents at reconsideration include three different quotes for the wheelchair and the various components and the reconsideration decision does not address the differences or provide any further information as to what other appropriate medical equipment or device is the least expensive to meet the appellant's needs. There is no doubt that the cost for increased care aide attendance to provide more frequent position changes would quickly outweigh the cost of the power recline component.

The panel finds that the ministry's decision which found that the appellant's request for the power recline component did not meet the legislative criteria of EAPWDR Schedule C sections 3(1)(b)(ii), (iii) or 3.2 was not reasonable.

In terms of the seat elevation, the panel finds that the ministry reasonably determined that the OT had not confirmed the medical need for seat elevation, that seat elevation was not required to achieve or maintain basic mobility, or that it was the least expensive appropriate medical equipment or device. While it may be beneficial for the appellant to have seat elevation, pursuits such as the art gallery or theatre are not necessary to achieve basic mobility. In terms of appointments to the doctor or dentist, the appellant's health practitioners would be able to accommodate any height requirement change by adapting their seat level at no additional cost to the appellant.

### **Conclusion**

The panel finds that the ministry's decision that the appellant was not eligible for the seat elevation component as the information provided did not meet the legislative requirements of EAPWDR Schedule C, sections 3(1)(b)(ii), (iii) or 3.2 was reasonable.

However, the panel finds that the ministry's reconsideration decision that the appellant did not meet the legislative criteria for funding for the power leg rests, attendant controls, and power recline was not reasonably supported by the evidence and was not a reasonable application of the legislation in the appellant's circumstances.

The panel therefore confirms the ministry's decision with respect to the seat elevation and rescinds the ministry's decision with respect to the power leg rests, attendant controls, and power recline. The appellant is partly successful on appeal.

APPEAL NUMBER  
2020-00068

**PART G – ORDER**

THE PANEL DECISION IS: (Check one)       UNANIMOUS       BY MAJORITY

THE PANEL       CONFIRMS THE MINISTRY DECISION       RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister  
for a decision as to amount?       Yes       No

**LEGISLATIVE AUTHORITY FOR THE DECISION:**

*Employment and Assistance Act*

Section 24(1)(a)  or Section 24(1)(b)

and

Section 24(2)(a)  or Section 24(2)(b)

**PART H – SIGNATURES**

PRINT NAME

Helene Walford

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/04/30

PRINT NAME

Jeanne Byron

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/04/30

PRINT NAME

Kim Read

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/04/30